

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

Derrick S. Haaby)
Petitioner,) 3:09-cr-00469-JO
v.)
United States of America,) OPINION AND ORDER
Respondent.)

JONES, J.,

In the present action, petitioner, acting pro se, filed three documents which I construe as motions: a “Verified Petition in the Nature of a Motion for Order to Show Cause Re: Vacature of Judgment” (#44); a “Petition and Order to Seal Records” (#46); and a letter (#45) in which he requests a hearing for the Show Cause motion. For the following reasons the motions are DENIED.

Previously, petitioner pled guilty to online enticement of a minor for the purpose of engaging in sexual activity pursuant to 18 U.S.C. § 2422(b). The plea agreement provided for a prison sentence of 240 months, followed by a term of supervised release of not less than ten years. The agreement also contained a waiver of appeal and a limited waiver of the right to bring a collateral challenge under 28 U.S.C. § 2255. On May 11, 2011, petitioner filed a Motion to Vacate or Correct Sentence under 28 U.S.C. § 2255 (#23). On May 15, 2012, petitioner’s motion was denied (#39) on the merits. After reading petitioner’s Motion for Order to Show

Cause, in which he seeks, inter alia, to have his judgment vacated on the ground that the court lacked subject matter jurisdiction, I construed it as a motion for relief under 28 U.S.C. § 2255.

Section (h) of 28 U.S.C. § 2255 provides:

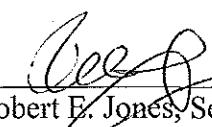
A second or successive motion must be certified ... by a panel of the appropriate court of appeals to contain--(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

Petitioner has not obtained certification from the 9th Circuit Court of Appeals to file this second or successive § 2255 motion. Therefore, I have no jurisdiction to consider the petition. See United States v. Washington, 653 F.3d 1057, 1065 (9th Cir. 2011). Because I lack jurisdiction to consider the petition, I deny petitioner's letter request for a hearing on the motion.

As to his motion for an order to seal records, petitioner did not supply any records he wishes to have sealed. No records were attached to the motion and none was filed with the clerk's office. Without any documents, the court has nothing to seal. The "Petition and Order to Seal Records" is denied.

Petitioner's Motions #44, 45 and 46 are DENIED.

DATED this 30 day of July, 2013



Robert E. Jones, Senior Judge
United States District Court